

COPY



03AGR102

TEMPORARY WATER SERVICE AGREEMENT  
FOR THE SANTALUZ NORTHERN DEVELOPMENT SITE  
BETWEEN THE CITY OF SAN DIEGO AND  
OLIVENHAIN MUNICIPAL WATER DISTRICT

This is an Agreement to provide temporary water services for the Santaluz Northern Development Site ("Agreement"), made and entered into this 3rd day of November 2003, between the Water Department of the City of San Diego, California, a municipal corporation ("City") and the Olivenhain Municipal Water District ("District"), also referred to individually as "Party" and collectively as "Parties."

RECITALS

A. City and District are member agencies of the San Diego County Water Authority ("CWA").

B. Portions of District's southerly and easterly boundaries are contiguous to City's northerly and westerly boundaries in the vicinity of Camino del Sur and Rancho Bernardo Road, all as more specifically described in the attached Exhibit "A."

C. City anticipates approving Santaluz, LLC's ("Developer") development project consisting of 119 affordable residential units (including a recreation center), 46 market rate residential units, and common landscape areas located adjacent to Camino del Sur ("Project") and entering into an affordable housing agreement ("Affordable Agreement") with Developer for the 119 affordable residential units. The Project is more specifically described in the attached Exhibit "B."

D. City currently does not have water pipelines or other water service facilities in place to provide water service to the Project and it is not financially feasible for the Developer to construct such water service facilities.

E. District has sufficient water capacity to serve the Project and is willing to make such water capacity available for purchase by City on a temporary basis.

F. District has an existing 10-inch water pipeline located in Rancho Bernardo Road and an existing 16-inch water pipeline located in Four Gee Road that can provide water to the Project ("District Pipelines"), all as more particularly described in the attached Exhibit "C."

G. City and District desire by this Agreement to provide for the installation of any necessary water facilities to provide for the temporary delivery of water from District to the Project and the temporary sale of water to City for use on the terms set forth herein.

NOV 03 2003

FILED

CITY CLERK

NOW THEREFORE, in consideration of the facts and mutual obligations of the Parties as herein expressed, City and District agree as follows:

1. Condition Precedent. This Agreement is entered into based on the assumption that City will enter into the Affordable Agreement with Developer for the 119 affordable residential units. District shall cooperate with City and Developer in the planning and engineering of the water facilities necessary to provide temporary delivery of water from District to the Project prior to the execution of the Affordable Agreement. All other obligations of District and City under this Agreement, however, are expressly contingent on the approval and execution of the Affordable Agreement between City and Developer, and City providing an executed copy of the Affordable Agreement to District.

2. Approval. This Agreement must be approved by the Board of Directors of District and by an ordinance adopted by vote of the San Diego City Council. Accordingly, the term of this Agreement shall commence on the latter of the day that the ordinance approved by the San Diego City Council becomes effective and the day the Board of Directors of District approves this Agreement ("Effective Date").

3. Term of Temporary Water Service. District agrees to provide two temporary water service connections to the Project until the earlier of (a) ten (10) years from the Effective Date or (b) such time as City water facilities are available to the Project. No later than seven (7) years after the Effective Date, assuming City has been unable to provide water service to the Project, City and District shall evaluate whether (i) there is an alternate water supplier for the Project, (ii) annexation of the Project into District for water service should be pursued, or (iii) this Agreement should be extended. In the event that City is unable to supply water service to the Project prior to ten (10) years from the Effective Date, there is no acceptable alternate water supplier, and annexation of the Project into District for water service is not accomplished, City and District may, in their respective sole and absolute discretion, agree to extend this Agreement in two-year increments.

4. Construction and Ownership of Temporary Facilities and Distribution System. By separate agreement, City shall cause Developer to construct all of the facilities needed to connect the Project to the District Pipelines, including but not limited to connecting pipelines, meters, pressure reducers, and vaults ("Temporary Facilities"), all as more particularly described on the attached Exhibit "D." The District shall not be obligated to construct or pay for any of the Temporary Facilities. The Temporary Facilities shall be designed and constructed to the reasonable satisfaction of District. Upon completion and acceptance of the Temporary Facilities by District, District shall solely own and be responsible for operating and maintaining the Temporary Facilities. By separate agreement, City shall also cause Developer to construct the water distribution system as identified in the accepted Project Specific Water Study ("Distribution System"). The Distribution System, as more particularly described on the attached Exhibit "E," shall be designed and constructed in accordance with City Water Department guidelines and standards. Upon completion and acceptance of the Distribution System by City, City shall own and be responsible to operate and maintain the Distribution System.

5. Emergency Water Agreement. If determined necessary by City, upon termination or expiration of this Agreement, City and District shall execute the Emergency Water Service Agreement attached hereto as Exhibit "F" in order to provide a secondary source of water for the Project in the event of disruption to City's water service. One water connection with District may be retained for purposes of the Emergency Water Service Agreement. Any portion of the Temporary Facilities that are unnecessary to provide the permanent secondary source of water for the Project shall be removed at the sole cost and expense of Developer by separate agreement with City.

6. Reimbursement. By separate agreement, City shall cause Developer to reimburse District for all reasonable costs incurred by District for its review of plans for the Temporary Facilities, inspection of the Temporary Facilities, and other related expenses, including legal expenses associated with the review and processing of this Agreement, until such time that the Temporary Facilities are accepted by District.

7. Capacity Charge. By separate agreement, City shall cause Developer to pay District the prevailing capacity charge for approximately 165 equivalent dwelling units ("edu"), which includes the 165 residential units, recreation center, and common landscape areas in the Project, prior to the provision of water service by District to the Project.

a. The current capacity charge collected by District is \$5,651 for each edu. City acknowledges that the capacity charge may escalate until the time that such charge is paid for the Project and that the calculated number of edu's may change based on the actual facilities constructed as determined pursuant to rules of District.

b. District agrees to reimburse City a portion of the paid capacity charge if the temporary water service connection provided under this Agreement is terminated within ten (10) years after the Effective Date. The amount of the reimbursement shall be prorated based on the length of time from the Effective Date to the date that City begins to provided water service to the Project as described in the following table:

up to 1 year	100% of capacity charges received	6 years up to 7 years	30%
1 year up to 2 years	75%	7 years up to 8 years	21%
2 years up to 3 years	64%	8 years up to 9 years	17%
3 years up to 4 years	57%	9 years up to 10 years	10%
4 years up to 5 years	48%	10 years or more	none
5 years up to 6 years	39%		

8. Commodity Rate and Meter Charge. City shall pay District a commodity rate of \$1.60 for each hundred cubic feet of treated water delivered to the Project. City also shall pay District a standard monthly service charge based on the size of the two master water meters installed for the Project, excluding any separate water meters that are exclusively for fire

purposes. The current monthly charges by District for an 8" water meter is \$989.96.

a. City acknowledges the commodity rate and monthly meter charge may periodically be adjusted in the sole discretion of the Board of Directors of District to reflect changes in rates and charges charged to other customers in District's service area.

b. The commodity rate charged by District includes a charge for treated water deliveries to the Project at District's treated water cost, including system operation and maintenance costs, but excluding depreciation of equipment and facilities, meter reading, and billing costs.

c. In the event that CWA charges District higher purchased water rates because of the additional increment of water being supplied to the Project, such costs shall be proportionally allocated to each hundred cubic feet of water delivered by District to the Project. Such increased costs may be in the form of one-time temporary charges by CWA for Tier II water and the associated incremental variable and fixed charges for increased water deliveries.

d. District shall bill City on a monthly basis for the delivery of treated water to the Project based on the reading of the two master meters installed as part of the Temporary Facilities and consistent with the rates described in this Paragraph 8. City shall have the right to confirm the calibration and accuracy of the two master meters. City shall be responsible for the individual meter reading within the Project and the billing of residents within the Project for water service.

9. Limitation on Service. This Agreement provides for temporary water service for no more than 165 edu's, which includes 119 affordable residential units, a recreation center, and common landscape areas, and 46 market rate residential units. Any additional service is at the sole discretion of District.

10. Termination. This Agreement may be terminated by City upon ninety (90) days advance written notice to District in the event that City is able to provide water service to the Project, at which time water to the Project will be provided by City and be subject to City's requirements and fees in place at that time, subject to the conditions agreed to in the Water Service Agreement Between the City of San Diego and Santaluz, LLC, a copy of which is attached hereto as Exhibit "G."

11. Notice. Notices required or permitted hereunder shall be given in writing and either served personally upon or mailed by registered or certified mail to:

City of San Diego  
600 B Street, Suite 1300, MS913  
San Diego, CA 92101  
Attention: Larry Gardner  
Water Department Director

Olivenhain Municipal Water District  
1966 Olivenhain Road  
Encinitas, CA 92024  
Attention: David C. McCollom  
General Manager

Or such other person and address as either Party shall advise the other in writing.

12. Successors and Assigns. This Agreement and all rights and obligations contained herein shall be in effect whether or not any or all Parties to this Agreement have been succeeded by another entity, and all rights and obligations of the Parties signatory to this Agreement shall be vested and binding on their successors in interest.

13. Indemnification. City and District agree to defend, indemnify, protect and hold the other and its agents, officers and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to the other's employees, agents or officers which arise from or are connected with and are caused or claimed to be caused by the acts or omissions of City or District, and their agents, officers or employees, in performing the work or services herein, and all expenses of investigation and defending against same; provided, however, that City's and District's duty to indemnify and hold harmless shall not apply to those incidents or claims arising from the negligence or willful misconduct of the other Party or its officers, agents or employees.

14. Severability. The partial or total invalidity of one or more sections of this Agreement shall not affect the validity of this Agreement.

15. Interpretation. This Agreement is entered into, and shall be construed and interpreted in accordance with the laws of the State of California. Either Party may refer any dispute to non-binding mediation for resolution on mutual consent.

16. Limitation on Powers. Nothing in this Agreement shall be construed as a limitation upon the powers of City as a chartered City of the State of California or upon District as a water district organized under the law of the State of California.

17. Amendment. This Agreement may be modified or amended by the Parties hereto at any time. Any such modification or amendment must be mutually agreed upon and executed by the Parties in writing. Verbal modifications shall be of no effect.

18. Entire Agreement. The terms and obligations set out herein constitute the full and entire agreement between the Parties. Any verbal representation made at or prior to this Agreement is of no force and effect.

19. Recitals. All recitals herein are incorporated into this Agreement and are made a part hereof.

20. Attorney's Fees and Costs. If either Party commences an action against the other Party based upon this Agreement, the prevailing Party in whose favor final judgement is entered will be entitled to recover from the other Party all reasonable costs and expenses of suit, including reasonable attorneys' fees.

21. Assignment. Neither Party shall assign this Agreement, in whole or in part.

without the prior written consent of the other Party, which shall not be unreasonably withheld.

22. Waiver. No breach of any provision hereof can be waived unless in writing. Waiver of any one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or any other provision hereof.

23. Counterparts. Separate counterparts of this Agreement may be separately signed by each Party, all with the same effect as though the same counterpart had been signed simultaneously by both Parties.

24. Drafting Ambiguities. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms, and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each of the Parties hereto. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

25. Authority. Each Party signing on behalf of a corporation, partnership, joint venture, or governmental entity hereby declares that the authority has been obtained to sign on behalf of the corporation, partnership, joint venture, or entity and agrees to hold the other Party hereto harmless if it is later determined that such authority does not exist.

26. Approval. Whenever this Agreement requires approval, consent, acceptance, or determinations of a Party, such approval, consent, acceptance, or determination shall not be unreasonably withheld, delayed, or conditioned.

27. Cooperation. The Parties shall deal with each other in good faith and assist each other in the performance of the provisions of this Agreement. Each Party covenants to take all action and to do or cause to be done all things and to execute, with acknowledgment if required, any and all documents and writings that may be necessary or proper to achieve the purposes and objectives of this Agreement and to completely perform all obligations, in a timely manner, as provided in this Agreement. Time is of the essence. Neither Party shall do anything directly or indirectly which shall have the effect of harming or injuring the right of the other Party to receive the benefits of this Agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through the Director of the Water Department, pursuant to Ordinance No. 0-18232 authorizing such execution, and by the Olivenhain Municipal Water District.

OLIVENHAIN MUNICIPAL  
WATER DISTRICT

THE CITY OF SAN DIEGO

By: David C. McCollom

General Manager

Olivenhain Municipal Water District

By: Larry Gardner

Water Department Director  
City of San Diego

I HEREBY APPROVE the form and legality of this Agreement this 25 day of November, 2003.

CASEY GWINN, City Attorney

By: 

Deputy City Attorney



00AGR007

**AGREEMENT BETWEEN THE CITY OF CARLSBAD  
AND THE OLIVENHAIN MUNICIPAL WATER  
DISTRICT FOR THE CONSTRUCTION AND  
RECONSTRUCTION OF VARIOUS WATER LINES  
AND RELATED STRUCTURES WITHIN THE CITY OF  
CARLSBAD**

THIS AGREEMENT, made and entered into as of the 27 day of April,  
2000, by and between the CITY OF CARLSBAD, a municipal corporation, hereinafter referred  
to as "CARLSBAD", and OLIVENHAIN MUNICIPAL WATER DISTRICT, a municipal  
corporation, hereinafter referred to as "DISTRICT".

RECITALS

WHEREAS, CARLSBAD desires to realign and widen Rancho Santa Fe Road in the  
Canyon Alignment as directed by the City Council at their meeting of October 20, 1987; and,

WHEREAS, the realigned and widened Rancho Santa Fe Road will conflict with existing  
DISTRICT facilities; and,

WHEREAS, said road is integral to the circulation element plans for Carlsbad, and the  
North County Region in general and said water mains are integral to the delivery of water within  
the DISTRICT; and,

WHEREAS, the CARLSBAD and DISTRICT desire to establish mutually agreed upon  
responsibilities for the funding, design, and construction for relocation of the DISTRICT facilities  
impacted by the realignment and widening of said road.

NOW THEREFORE, in consideration of the above recitals, CARLSBAD and DISTRICT do  
hereby mutually and jointly agree as follows:

I. RANCHO SANTA FE ROAD REALIGNMENT:

A. PROJECT DESCRIPTION

Rancho Santa Fe Road, Phase 1 (PROJECT) involves the relocation and widening of  
the existing road from southerly of La Costa Avenue to approximately 1½ miles north.  
The project involves grading of the roadbed to full prime arterial road width of 126 feet  
with construction of improvements varying from a full 6 traveled lanes with outside curb  
and gutters and sidewalks plus improved median, in the vicinity of the intersection with  
La Costa Avenue, to four traveled lanes with two 8-foot shoulders and median curbs,

over the majority of the road northerly of La Costa Avenue. The road realignment necessitates the relocation of some DISTRICT facilities due to the incompatibility of existing structures and pipelines with the new alignment of said road. Portions of the affected DISTRICT facilities are within easements wherein the DISTRICT has senior rights, see attached Exhibit "A". These facilities are as follows:

- Pressure Reducing Station located along the west side of the new road alignment opposite road station 175+50 and portions of the pipelines leading into and out of the pressure reducing station.
- Eighteen inch water transmission main (Line G) located along the southerly side of a S.D.G. & E. easement crossing the new road alignment at approximate road station 198+00.
- Sixteen inch water transmission main (Line N) crossing the new road alignment at approximate road station 217+00.

Portions of the affected DISTRICT facilities are within easements wherein the CITY has senior rights, see attached Exhibit "A". These facilities are as follows:

- Portions of the eighteen inch water transmission main located within the existing truck bypass right-of-way.
- Portions of a twelve inch water main located within the existing Rancho Santa Fe Road right-of-way.

In addition, the DISTRICT desires to construct a new sixteen inch water main in the realigned Rancho Santa Fe Road to connect the existing 18" main (Line G) to the existing 16" main (Line N), see attached Exhibit "A".

To facilitate construction of the PROJECT, DISTRICT has elected to proceed with a portion of their relocation work in advance of the road construction. This work entails the following items:

- Relocation of the Pressure Reducing Station.
- Construction of temporary bypass lines for the 16-inch and 18-inch water mains where they cross the new road alignment.
- Construction of a new 18-inch water main from the temporary bypass west to existing Rancho Santa Fe Road.
- Construction of a new 18-inch water main within a portion of existing Rancho Santa Fe Road.

This work will herein after be termed OMWD PHASE 1.

## **B. OMWD PHASE 1**

### **1. DISTRICT AGREES:**

- a) To act as lead agency for the purpose of design and environmental review and to provide all labor, materials, tools and equipment for OMWD PHASE 1, including permit acquisition, advertising, award, contract administration, Resident Engineer, material source inspection, independent assurance and specialty testing, and such other construction engineering as may be required, for satisfactory completion of OMWD PHASE 1.
- b) To construct OMWD PHASE 1 by contract in accordance, with plans and specifications prepared by DISTRICT and approved by Carlsbad said plans

being referred to as OMWD Unit G/N Facilities Relocation, Phase 1, Account No. SD-001-464-04.

- c) If, upon opening of bids for OMWD PHASE 1, it is found that the lowest responsible bid exceeds the Engineer's Estimate, CARLSBAD and DISTRICT shall consult and agree upon a course of action.
- d) To establish separate OMWD PHASE 1 accounts to accumulate charges for all costs to be paid for by CARLSBAD pursuant to this Agreement. Design and inspection costs will be shared by DISTRICT and CARLSBAD based on the percent of construction cost for which each agency is responsible for. Administration costs incurred by DISTRICT and CARLSBAD will be the responsibility of the agency that incurred the cost.
- e) Upon completion of OMWD PHASE 1 and all work incidental thereto, to furnish CARLSBAD with a detailed statement of the total actual costs of construction and services for OMWD PHASE 1, including the costs of any contract claims which have been allowed to the construction contractor. DISTRICT thereafter shall refund to CARLSBAD, within 25 days, any amount of CARLSBAD's deposits, as required by Section I.B.2.c) of this agreement, plus accrued interest and payments DISTRICT is holding after actual costs to be borne by DISTRICT have been deducted, or to bill CARLSBAD for any additional amount required to complete CARLSBAD financial obligations pursuant to this Agreement.
- f) To designate a project Resident Engineer who shall represent DISTRICT as the single point of contact for OMWD PHASE 1 administration.
- g) To consult with CARLSBAD in resolution of any contract claims associated with work.
- h) To acquire necessary right-of-way for the waterline easements to be relocated as a part of OMWD PHASE 1.
- i) To fund the costs of those waterline facilities required to be relocated as a result of the road realignment where CARLSBAD has senior rights. These items are listed on Exhibit "B" attached hereto and made a part hereof. Said costs shall include costs of providing personnel resources, design costs and including the cost of any furnished materials, supplemental work, change orders and contract claims paid to the construction contractor, and the defense of all project related claims which may be filed by the contractor or portion of services attributed to such work applied in accordance with standard accounting procedures. The actual cost of services for OMWD PHASE 1 shall be determined after completion of all work and upon final accounting of costs.
- j) To be responsible for the operation and maintenance of water facilities belonging to DISTRICT during the construction period of the OMWD PHASE 1.
- k) To provide all rights-of-way required for construction and necessary mitigation within DISTRICT jurisdiction.
- l) To obtain and pay for any right-of-way permits needed for the work.

2. CARLSBAD AGREES:

- a) To designate a single project representative authorized to act on behalf of CARLSBAD in relation to contract change orders and overall coordination during construction of OMWD PHASE 1. Said representative and DISTRICT's Resident Engineer will cooperate and consult with each other, to reach agreement on construction decisions.
- b) To bear the actual cost for those portions of the waterline and other facilities relocation's that are within areas where the DISTRICT has senior rights. These items are listed on Exhibit "C" attached hereto and made a part hereof. Said costs of services shall include costs of providing design, project management, inspection and including the cost of any furnished materials, supplemental work, Carlsbad approved change orders and contract claims paid to the construction contractor. The actual cost of services for OMWD PHASE 1 shall be determined after completion of all work and upon final accounting of costs.
- c) To deposit with DISTRICT within thirty (30) days of award of the construction contract, a sum equal to the Engineer's estimate cost plus 10% contingency for those facilities that are the responsibility of the CARLSBAD, as shown on Exhibit "C".
- d) To pay DISTRICT upon completion of all work and within twenty-five working days of receipt of a detailed statement made upon final accounting of costs, any amount over and above the aforementioned deposits and payments required to complete CARLSBAD's financial obligation pursuant to this Agreement.
- e) To review and approve or disapprove OMWD PHASE 1 plans and specifications within ten (10) days of final submittal by DISTRICT.
- f) Within ten (10) days of completion of OMWD PHASE 1 and notification by DISTRICT, CARLSBAD shall inspect all work performed on the PROJECT and determine whether the work was completed in accordance with DISTRICT approved plans and specifications. If by the end of this ten (10) day period, CARLSBAD has not notified DISTRICT in writing through the CMWD General Manager that the work materially varies from the approved plans, CARLSBAD shall be deemed to have accepted the OMWD PHASE 1 in accordance with the approved plans and specifications.
- g) To cooperate in obtaining required permits.

C. RANCHO SANTA FE ROAD PHASE 1 (PROJECT)

The obligations for CARLSBAD and DISTRICT will be spelled out in an amendment to this agreement, as specified in Section VI of this agreement, at such time that all plans, specifications and cost estimates for the entire PROJECT are submitted for review to CARLSBAD AND DISTRICT.

## II. OWNERSHIP AND MAINTENANCE

### A. ROAD IMPROVEMENTS

Upon completion of all work under this Agreement, ownership and title to materials, equipment, and appurtenances which are installed within the public right-of-way will automatically be vested in and maintained by CARLSBAD with the exception of all water conveyance facilities such as pipelines, pressure reducing stations, and other appurtenances which are under the ownership of the DISTRICT. Such facilities will be vested in and maintained by the DISTRICT. CARLSBAD shall have senior rights within the road right-of-way, except in areas where DISTRICT has established senior rights by ownership of existing waterline easements.

### B. WATER LINE EASEMENTS

Upon completion of all work under this Agreement, ownership and title to materials, equipment, and appurtenances which are installed within DISTRICT's easements will automatically be vested in and maintained by DISTRICT. DISTRICT shall maintain senior rights within the existing water line easements where they currently have senior rights.

## III. LIABILITY AND INDEMNIFICATION

Pursuant to Section 895.4 of the Government Code, CARLSBAD and DISTRICT agree that each will assume the full liability imposed upon it or any of its officers, agents, or employees for injury caused by or arising out of a negligent or wrongful act or omission occurring in the performance of its obligations under this agreement, and each party agrees to indemnify and hold harmless the other party for any loss, cost, or expense that may be imposed upon such other party by virtue of Sections 895.2 and 895.6 of the Government Code.

The indemnity provisions are not limited in any way by the extent of any policy of insurance currently in force and held by either party. All construction contracts for any project which spans the jurisdictional boundary between CARLSBAD and DISTRICT shall include indemnity provisions and insurance provisions, whereby the contractor indemnifies both CARLSBAD and DISTRICT and adds both agencies as additional insured on Insurance Policy.

## IV. DISPUTE RESOLUTION

In the event that any dispute arises under this Agreement, the parties shall meet and confer informally in an attempt to resolve the dispute within seven (7) calendar days of the occurrence of the matter leading to the dispute. If the parties are unable to resolve the dispute within thirty (30) calendar days of the occurrence, either party may pursue its other remedies available at law or in equity.

## V. NOTIFICATIONS

Unless otherwise specifically provided in this Agreement, all notices, demands, or other communications given hereunder will be in writing and will be deemed to have been duly delivered upon personal delivery or as of the second business day after mailing by

United States mail, return receipt requested, postage prepared and addressed as follows:

If to DISTRICT: David McCollom  
General Manager  
OLIVENHAIN MUNICIPAL WATER DISTRICT  
1966 Olivenhain Road  
Encinitas, CA 92024

If to CARLSBAD: Lloyd Hubbs  
Public Works Director  
CITY OF CARLSBAD  
1635 Faraday Avenue  
Carlsbad, CA 92008-7314

VI. MODIFICATIONS

This Agreement may not be modified, amended, or otherwise changed unless by an amendment, in writing, executed by the parties hereto.

VII. TERMINATION

This Agreement shall terminate after all the street and water line improvements contemplated by this agreement have been constructed, after all payments required under this agreement have been made, and after all maintenance responsibilities for the respective street and water improvements have been assumed by the respective agencies in accordance with the terms of this agreement. However, senior rights and indemnities provided in this agreement shall remain valid and enforceable after termination.

VIII. COUNTERPARTS

This agreement may be executed by the CITY and DISTRICT in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument

IX. CHOICE OF LAW

This agreement shall be governed by, the laws of the State of California and venue shall be proper in the San Diego Superior Court, North County Branch or such other venue as provided by law.

X. SEVERABILITY

If one or more clauses, sentences, paragraphs, provisions or terms of this agreement shall be held to be unlawful, invalid, or unenforceable, it is hereby agreed by the CITY and DISTRICT that the remainder of this agreement shall not be affected hereby.

XI. HEADINGS

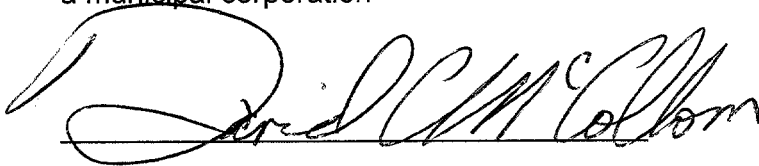
The headings of articles and paragraphs of this agreement are for convenience only, and no presumption or implication of the intent of the parties as to the construction of this agreement shall be drawn therefrom.

XII. COMPLETE AGREEMENT

The foregoing constitutes the full and complete agreement of the parties. There are no oral understandings or agreements not set forth in writing herein.

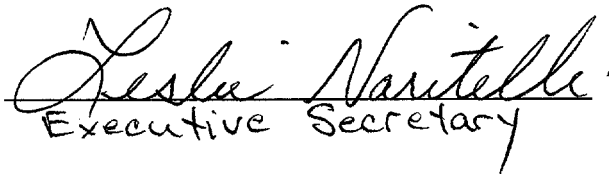
IN WITNESS WHEREOF, this Agreement is executed by the CITY OF CARLSBAD pursuant to action taken by the City Council and by the DISTRICT pursuant to action taken by it's Board of Directors.

OLIVENHAIN MUNICIPAL WATER DISTRICT,  
a municipal corporation

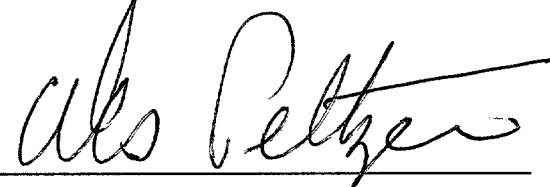


DATE: 04/27/2000

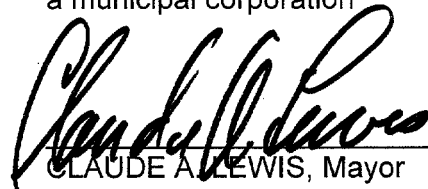
ATTEST:

  
Executive Secretary

APPROVED AS TO FORM:

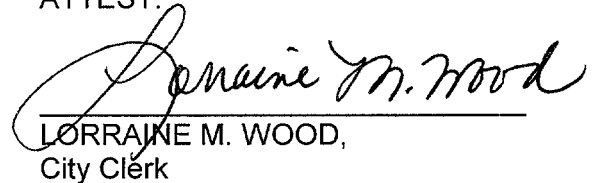
By: 

CITY OF, CARLSBAD,  
a municipal corporation

  
CLAUDE A. LEWIS, Mayor

DATE: 5-8-00

ATTEST:

  
LORRAINE M. WOOD,  
City Clerk

APPROVED AS TO FORM:  
RONALD R. BALL  
City Attorney

By:   
Deputy City Attorney



## **Exhibit "B"**

### **List of Items That Are the Responsibility of Olivenhain Municipal Water District**

#### **Mobilization:**

Mobilization, Demobilization, Bonds, and Insurance for entire Unit G/N Facilities Relocation, Phase 1 Project, including insurance for damage caused by Earthquake and Tidal Wave.

#### **Item D-1:**

- 18" PVC and Steel Pipeline Sta 12+75 to Sta 14+06 with interconnection to existing 14" waterline, combination air-vacuum assemblies, blow-off assemblies, hydrostatic pressure test and disinfection for these facilities (including all connections, temporary piping, temporary valves, test bulkheads, test equipment, chlorination equipment), all demolition, disposal, butt straps, cathodic protection and joint bonding (including all anodes, test stations, wires, and connections), design and construction of sheeting, shoring, and bracing of trenches or other provisions for worker protection from the hazard of caving ground for the work to be done, and associated appurtenances.
- 12" PVC Pipeline Sta 14+06 to Sta 25+43 with manual air-release assembly, hydrostatic pressure test and disinfection for these facilities (including all connections, temporary piping, temporary valves, test bulkheads, test equipment, chlorination equipment), all demolition, disposal, butt straps, cathodic protection and joint bonding (including all anodes, test stations, wires, and connections), design and construction of sheeting, shoring, and bracing of trenches or other provisions for worker protection from the hazard of caving ground for the work to be done, and associated appurtenances.

#### **Item D-2:**

- 18" Steel Pipeline Sta 29+75 to Sta 39+50 with sample port, combination air-release valve assembly, and associated appurtenances, hydrostatic pressure test and disinfection for these facilities including all connections, temporary piping, temporary valves, test bulkheads, test equipment, chlorination equipment, cathodic protection and joint bonding (including all anodes, test stations, wires, and connections), design and construction of sheeting, shoring, and bracing of trenches or other provisions for worker protection from the hazard of caving ground for the work to be done, and appurtenant items.
- Access road from Sta 1+00 to Sta 3+20 including all earthwork, drainage facilities, and appurtenant items.

## **Exhibit "C"**

### **List of Items That Are the Responsibility of the City of Carlsbad**

#### **Item C-1:**

- Pressure Reducing Station including piping, valves, relief valve discharge piping, storm drain catch basin modifications, hydrostatic pressure test and disinfection for these facilities (including all connections, temporary piping, temporary valves, test equipment, chlorination equipment), electrical and field-mounted instruments (including all electrical components and instruments for a complete and operable system), cathodic protection and joint bonding (including all anodes, test stations, wires, and connections), design and construction of sheeting, shoring, and bracing of trenches or other provisions for worker protection from the hazard of caving ground for the work to be done, and associated appurtenances.
- 14" and 18" Steel pipe between Station 25+43 to Sta 25+85.82, including all piping, valves, thrust blocks and appurtenances to provide connection between new piping and exiting 14" pipeline, hydrostatic pressure test and disinfection for these facilities (including all connections, temporary piping, temporary valves, test bulkheads, test equipment, chlorination equipment), and including all demolition, disposal, butt straps, cathodic protection and joint bonding (including all anodes, test stations, wires, and connections), design and construction of sheeting, shoring, and bracing of trenches or other provisions for worker protection from the hazard of caving ground for the work to be done, and associated appurtenances.

#### **Item C-2:**

18" Steel Pipeline Sta 25+85.82 to 29+75 including combination air-vacuum valve, sampling port, and appurtenances, flow meter vault with flow meter (at Sta 26+ 30), power supply, and electrical and field-mounted instruments (including all electrical components and instruments for a complete and operable system), hydrostatic pressure test and disinfection for these facilities (including all connections, temporary piping, temporary valves, test bulkheads, test equipment, chlorination equipment), cathodic protection and joint bonding (including all anodes, test stations, wires, and connections ), design and construction of sheeting, shoring, and bracing of trenches or other provisions for worker protection from the hazard of caving ground for the work to be done, and associated appurtenances.

#### **Item C-3:**

18" Steel Bypass Pipeline Sta 39+50 to Sta 43+48 with 18" outlets at Sta 39+50 and at Sta 43+48, interconnection to existing 18" Unit G waterline at Sta 43+48, blow-off assembly, combination air-release valve assembly, and associated appurtenances, hydrostatic pressure test and disinfection for these facilities (including all connections, temporary piping, temporary valves, test bulkheads, test equipment, chlorination equipment), all demolition, disposal, butt straps, cathodic protection and joint bonding (including all anodes, test stations, wires, and connections), design and construction of sheeting, shoring, and bracing of trenches or other provisions for worker protection from the hazard of caving ground for the work to be done, and associated appurtenances.

#### **Item C-4:**

16" Steel Bypass Pipeline Sta 1 +00 to Sta 5+69 with two 16" outlets and interconnections on existing Unit N pipeline, blow-off assemblies, combination air-release valve assembly, and associated appurtenances, hydrostatic pressure test and disinfection for these facilities (including all connections, temporary piping, temporary valves, test bulkheads, test equipment, chlorination equipment), all demolition, disposal, butt straps, cathodic protection and joint bonding (including all anodes, test stations, wires, and connections), design and construction of sheeting, shoring, and bracing of trenches or other provisions for worker protection from the hazard of caving ground for the work to be done, and associated appurtenances.

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RESOLUTION NO. 2000-63

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT BETWEEN THE CITY OF CARLSBAD AND THE OLIVENHAIN MUNICIPAL WATER DISTRICT FOR THE CONSTRUCTION AND RECONSTRUCTION OF VARIOUS WATER LINES AND RELATED STRUCTURES WITHIN THE CITY OF CARLSBAD AND APPROVING ADDITIONAL APPROPRIATIONS.

WHEREAS, the Olivenhain Municipal Water District (OMWD) boundary covers a portion of the City of Carlsbad (CITY); and

WHEREAS, the realignment of Rancho Santa Fe Road by CITY requires the relocation of facilities belonging to OMWD; and

WHEREAS, CITY and OMWD acknowledge the importance of maintaining potable water service to customers of OMWD; and

WHEREAS, CITY and OMWD desire to establish a mutually agreed upon responsibility for the funding, design, construction and maintenance of the relocated facilities belonging to OMWD; and

WHEREAS, an additional appropriation of \$753,500, representing the Engineer's Estimate of \$685,000 plus a 10% contingency, is required; and

WHEREAS, there are sufficient Community Facilities District No. 2 funds available for appropriation.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Carlsbad, California, as follows:

1. That the above recitations are true and correct.
2. That in the best interest of cooperation between CITY and OMWD, the City Council of the City of Carlsbad hereby authorizes the Mayor to execute the agreement between the City of Carlsbad and the Olivenhain Municipal Water District for the construction and reconstruction of various water lines and related structures within the City of Carlsbad.

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1           3.       That an appropriation of Community Facilities District No. 2 funds totaling  
2 \$753,500 is hereby approved.

3  
4           PASSED, APPROVED AND ADOPTED at a regular meeting of the Carlsbad City Council  
5 held on the 15th day of February, 2000 by the following vote, to wit:

6           AYES:   Council Members Lewis, Hall, Finnila, Nygaard and Kulchin

7           NOES:   None

8           ABSENT:   None

9  
10            
11          CLAUDE A. LEWIS, Mayor

12          ATTEST:

13            
14          LORRAINE M. WOOD, City Clerk

(SEAL)



# City of Carlsbad

Office of the City Clerk  
Records Management Department

MAY 11 2000

OLIVENHAIN MUNICIPAL  
WATER DISTRICT

May 9, 2000

David McCollom, General Manager  
OLIVENHAIN MUNICIPAL WATER DISTRICT  
1966 Olivenhain Road  
Encinitas, CA 92024

**RE: AGREEMENT BETWEEN THE CITY OF CARLSBAD AND THE  
OLIVENHAIN MUNICIPAL WATER DISTRICT FOR THE CONSTRUCTION  
AND RECONSTRUCTION OF VARIOUS WATER LINES AND RELATED  
STRUCTURES WITHIN THE CITY OF CARLSBAD**

At the meeting of May 2, 2000, the Carlsbad City Council adopted Resolution No. **2000-63**, approving the above referenced agreement.

Enclosed for your record is a copy of Resolution No. **2000-63**, as well as a fully executed agreement for your files.

If you have questions concerning the contract, please contact Lloyd Hubbs, Public Works Director, at 602-2730.

Sincerely,

Dee Ulrich  
Office of the Carlsbad City Clerk

Enclosures (2)



**ORIGINAL**



98AGR026

AGREEMENT BETWEEN  
SAN DIEGO COUNTY WATER AUTHORITY  
AND  
OLIVENHAIN MUNICIPAL WATER DISTRICT  
FOR DESIGN, CONSTRUCTION, OPERATION AND MAINTENANCE  
OF A  
TREATED WATER PIPELINE, RAW WATER PIPELINE,  
OLIVENHAIN 8 FLOW CONTROL FACILITY, AND ASSOCIATED FACILITIES

This Agreement is made and entered into as of September 30, 1998, by and between the SAN DIEGO COUNTY WATER AUTHORITY (hereinafter referred to as the "Authority"), organized and existing under the County Water Authority Act of the State of California (stats. 1943, c. 545, as amended), and the OLIVENHAIN MUNICIPAL WATER DISTRICT (hereinafter referred to as "District") in view of the following:

- A. Authority provides treated and raw water service to its twenty-three (23) member agencies to augment local water supplies.
- B. District is a member agency of Authority and proposes to treat and distribute, to District's service area, treated water from the future Olivenhain Water Treatment Plant (hereinafter referred to as "OWTP").
- C. In order to distribute treated water from the OWTP, District needs to design and construct a treated water pipeline from the OWTP to District's service area (hereinafter referred to as "Treated Water Pipeline").
- D. Authority will design and construct a raw water pipeline and Second San Diego Aqueduct connection and isolation valve vault from Authority's Second San Diego Aqueduct to the proposed OWTP and Olivenhain Dam (hereinafter referred to as "Raw Water Pipeline" and "SAC," respectively), a component of Authority's Emergency Storage Project (ESP).
- E. District has requested Authority design and construct a new, permanent, metered 120 cubic feet per second (cfs) raw water flow control facility, at District's expense, off Authority's Raw Water Pipeline to be known as Olivenhain 8 Flow Control Facility (O8FCF) to meter raw water into District's OWTP for filtration and delivery to District's service area.
- F. Authority and District executed an agreement dated April 28, 1998 titled "Agreement Between the San Diego County Water Authority and the Olivenhain Municipal Water District for the Emergency Storage Project (Joint Use of Olivenhain Reservoir Site)" (hereinafter referred to as the "ESP Agreement"). The ESP Agreement defines Authority's and District's responsibilities for the

Treated Water Pipeline, Raw Water Pipeline, O8FCF, and Associated Facilities Agreement

OWTP, Raw Water Pipeline, Treated Water Pipeline, and other components of the Emergency Storage Project that effect District and Authority.

- G. The Treated Water Pipeline and Raw Water Pipeline will be constructed parallel to each other and share a common right-of-way. To help simplify design and construction of the pipelines, District desires Authority to design and construct the Treated Water Pipeline, at District's expense, in accordance with this Agreement.
- H. District has met all requirements, filed with the State of California, and obtained all environmental clearances for the Raw Water Pipeline, Treated Water Pipeline, O8FCF, associated facilities, and access road.

Now, therefore, it is agreed as follows:

1. Delivery of Raw Water to District:

- 1.1 Authority hereby agrees to deliver and sell up to 120 cfs of raw water to District as requested from time to time through a new, permanent, metered, service connection to be known as O8FCF along Authority's Raw Water Pipeline in proximity to District's OWTP site, as shown in Exhibit "A", per terms of Authority's Administrative Code and terms of this Agreement.
- 1.2 Availability, delivery, rate of flow, and cost of raw water to be sold by Authority to District through O8FCF to District's OWTP shall be as established from time to time by Authority's Board of Directors (Board) and in accordance with the Authority's Administrative Code on the same basis as generally applies to Authority's member agencies.
- 1.3 The Raw Water Pipeline, under this Agreement, does not include a pump station and related appurtenances or connection to the proposed Olivenhain Dam inlet pipe. The terms and conditions for design, construction, operation, and maintenance of these facilities will be made by Amendment to this Agreement or by separate agreement.

2. Raw Water Pipeline and Treated Water Pipeline Design:

- 2.1 Authority shall design and construct District's 100 cfs Treated Water Pipeline and Authority's 320 cfs Raw Water Pipeline from the western edge of the Authority's Second Aqueduct right-of-way between Paint Mountain and Escondido Creek to the OWTP as

Treated Water Pipeline, Raw Water  
Pipeline, O8FCF, and Associated  
Facilities Agreement

shown in Exhibit "A". The Treated Water Pipeline hydraulic gradient and diameter will be determined solely by District. The Raw Water Pipeline hydraulic gradient and diameter will be determined by Authority.

- 2.2 Authority will solicit proposals, negotiate, award, and administer a single design contract for District's Treated Water Pipeline and Authority's Raw Water Pipeline. Authority shall solicit engineering design proposals applying those procedures for the solicitation, review, and selection of such consultants customarily followed or applied in similar capital improvement projects undertaken by Authority, subject to all applicable Authority, state and federal laws, regulations, and policies. The parties will share the design costs in accordance with Paragraphs 6.1 and 6.2.
- 2.3. Authority shall assign up to four representatives and District shall assign up to two representatives to the Olivenhain Pipelines Engineering Design Consultant Selection Committee (Committee). Representatives will review and evaluate all proposals for engineering design of the Treated Water Pipeline and Raw Water Pipeline. The Committee shall follow the Authority's procurement procedures in recommending selection of an engineering design consultant to Authority's Board.
- 2.4. Except as provided herein, Authority will be responsible for and will undertake the review and approval of the engineering design for the Raw Water Pipeline, SAC, and associated facilities. District will be responsible for and will undertake the review and approval of the engineering design of the Treated Water Pipeline and associated facilities.
- 2.5 Right-of-way width and acquisition and design of the Treated Water Pipeline and Raw Water Pipeline will allow for sufficient right-of-way for construction of a future, second treated water pipeline. District and Authority shall have the opportunity to reserve capacity in this future treated water pipeline. The terms and conditions for design, construction, operation, and maintenance of this future treated water pipeline will be made by Amendment to this Agreement or by separate agreement.

Treated Water Pipeline, Raw Water  
Pipeline, O&FCF, and Associated  
Facilities Agreement

- 2.6. The Treated Water Pipeline, Raw Water Pipeline, and SAC will be designed and constructed to Authority standards and specifications.

3. Raw Water Pipeline and Treated Water Pipeline Construction:

- 3.1 Authority will award the construction contract for District's Treated Water Pipeline and Authority's Raw Water Pipeline to the lowest, responsive, and responsible bidder.
- 3.2 Authority will simultaneously construct and perform construction administration of District's Treated Water Pipeline and Authority's Raw Water Pipeline. Authority will inspect and perform construction administration for construction of both pipelines. District will perform periodic inspections to ensure Treated Water Pipeline and pipeline access road construction work conforms to the construction contract drawings and to ensure District's timely response for any change order approvals by District. Prior to Authority filing the Treated Water Pipeline's Notice of Completion, District will provide Authority with written confirmation that the Treated Water Pipeline and pipeline access road have met construction contract requirements.
- 3.3 Authority will obtain prior written approval from District for change orders above \$50,000 associated with the Treated Water Pipeline and pipeline access road construction prior to authorizing the contractor to perform change order work. Authority will not approve cumulative change orders in excess of \$50,000 for the Treated Water Pipeline and pipeline access road construction without first receiving acceptance by the District of the cumulative change orders. Upon District's written acceptance of cumulative change orders, Authority is authorized by the District to issue change orders for up to an additional \$50,000. District will provide to Authority written change order approvals or explanation for rejection within 5 calendar days of Authority's written request for approval of the change order. Final approval of change orders will be the sole responsibility of Authority. All change orders approved by Authority shall be binding upon District as they relate to cost allocation described in this Agreement so long as Authority obtained written approval of District for change orders as described in this subsection.

Treated Water Pipeline, Raw Water  
Pipeline, O8FCF, and Associated  
Facilities Agreement

- 3.4 Authority shall require the construction contractor(s) to coordinate all work at District's OWTP site with the District. Pipeline work requiring the shutdown of District facilities will not proceed without prior written approval from District. Such shutdown(s) will be scheduled during low demand periods.
- 3.5 Authority will require contractor(s) to name District as an additional named insured on all insurance policies and will include District with Authority as beneficiary in contractor's indemnification provisions to the construction contract(s).
- 3.6 Authority will provide District with one set of contact mylar "record drawings" of the Treated Water Pipeline, Raw Water Pipeline, and pipeline access road after filing the Treated Water Pipeline and Raw Water Pipeline's Notice of Completion.

4. Olivenhain 8 Flow Control Facility Construction:

- 4.1 New, metered O8FCF will be constructed in an above-ground structure. New O8FCF will house flowmeters, valves, and controls.
- 4.2 An O8FCF turnout will be constructed along the Raw Water Pipeline. O8FCF's turnout and inlet and discharge pipelines will be constructed to deliver up to 120 cfs raw water capacity to District's OWTP.
- 4.3 District will obtain, including preparation of plats and legals, and grant right-of-way easement for O8FCF and inlet and discharge pipelines, associated facilities, and access road in Authority's name on District's OWTP site. Grant of easement to Authority shall be substantially in the form of "Grant of Easement to Authority" as provided in Exhibit "B." The exact location of this easement will be determined by mutual agreement of the parties at a later date. District will provide O8FCF easement to Authority and provide reasonably necessary ingress and egress rights to the O8FCF site prior to advertisement of bids for O8FCF.
- 4.4 Authority will plan, design, engineer, construct, and administer O8FCF, turnout, inlet and discharge pipelines, and access road. O8FCF and associated facilities will be designed and constructed to Authority standards and specifications.

Treated Water Pipeline, Raw Water  
Pipeline, O8FCF, and Associated  
Facilities Agreement

- 4.5 Authority shall award the construction contract for O8FCF to the lowest, responsive, and responsible bidder.
- 4.6 Authority will provide District with one set of contact mylar "record drawings" of O8FCF discharge pipeline after filing O8FCF's Notice of Completion.

5. Ownership and Operational Control of Pipelines and Facilities:

- 5.1 Authority will own, maintain, and operate the Raw Water Pipeline, SAC, and associated facilities.
- 5.2 Authority will own, maintain, and operate O8FCF, turnout, inlet pipeline, associated facilities, access road, and discharge pipeline within Authority's right-of-way.
- 5.3 District will own and operate the Treated Water Pipeline and associated facilities.
- 5.4 Authority will maintain and repair District's Treated Water Pipeline and associated line structures from Authority's Second Aqueduct to OWTP. District shall have the right to assume maintenance and repair responsibility and costs for District's Treated Water Pipeline upon thirty (30) calendar days written notice to Authority.
- 5.5 District will own, maintain, and operate O8FCF discharge pipeline and associated facilities within District's right-of-way.
- 5.6 District will convey and District and Authority will jointly own the pipeline access road and Treated Water Pipeline and Raw Water Pipeline right-of-way as provided in the ESP Agreement, Sections 4.1.3 and 4.2.
- 5.7 Authority will administer and maintain the pipeline access road and Treated Water Pipeline and Raw Water Pipeline right-of-way as provided in the ESP Agreement, Section 9.9.

Treated Water Pipeline, Raw Water Pipeline, O8FCF, and Associated Facilities Agreement

6. Calculation and Payment of Costs:

- 6.1 Authority will pay 76.19 percent of all actual costs incurred for design, construction, and construction administration of the Raw Water Pipeline, Treated Water Pipeline, and associated facilities. The percentage is determined by dividing the Authority's 320 cfs Raw Water Pipeline capacity by the total combined capacity of 420 cfs for the Authority's Raw Water Pipeline and District's Treated Water Pipeline.
- 6.2 District will pay 23.81 percent of all actual costs incurred by Authority for design, construction, and construction administration of the Treated Water Pipeline, Raw Water Pipeline, and associated facilities. The percentage is determined by dividing District's 100 cfs Treated Water Pipeline capacity by the total combined capacity of 420 cfs for Authority's Raw Water Pipeline and District's Treated Water Pipeline.
- 6.3 The schedule below shall apply to District's design and construction payments to Authority for the Treated Water Pipeline and associated facilities:

District to pay Authority	Time of Payment
District's share of design costs for Treated Water Pipeline, Raw Water Pipeline, and associated facilities.	30 calendar days following receipt of monthly bill for Authority's and Authority contractor's expenses.
District's share of estimated construction costs for Treated Water Pipeline, Raw Water Pipeline, and associated facilities.	30 calendar days following receipt of monthly bill for Authority's and Authority contractor's expenses.
Balance of District's share of all remaining costs.	30 calendar days following Authority's filing the construction contract Notice of Completion.

- 6.4. District and Authority will allocate costs for the pipeline access road right-of-way acquisition and Treated Water Pipeline and Raw Water Pipeline right-of-way acquisition as provided for in the ESP Agreement, Section 4.2.

Treated Water Pipeline, Raw Water  
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- 6.5 Authority will pay all actual costs for design, construction, and construction administration of the SAC and associated facilities including the Second Aqueduct pipeline connection and vault valve.
- 6.6 District will pay all actual costs for the design, right-of-way acquisition, construction, and construction administration of the O8FCF, turnout, inlet and discharge pipeline, and associated appurtenances. District agrees and will deposit with Authority \$450,000 for design of O8FCF and associated facilities upon execution of this Agreement by all parties. District will deposit with Authority the engineer's estimated construction bid cost plus fifteen (15) percent for bidding and construction administration of O8FCF and associated facilities prior to Authority's advertising for bids for O8FCF and associated facilities bids. As to the District's deposit for the said construction bid cost, and bidding and construction administration cost, Authority shall, at the end of each full month after such deposit is made with Authority, credit to District interest at the rate of 5.80 percent per annum on the unexpended amount of said deposit." Final accounting of O8FCF costs to District will be as follows:
- i. Within 30 calendar days from Authority filing O8FCF Notice of Completion, Authority will perform and provide District a final accounting of District's actual costs for design, right-of-way acquisition, environmental clearance, construction, and construction administration of O8FCF and associated facilities.
  - ii. If District's share of actual costs is less than deposits, the excess amount, with interest at 5.8% per annum, will be refunded by Authority to District within 60 calendar days of Authority providing O8FCF final accounting to District.
  - iii. If District's share of actual costs is more than deposits, District will, within 60 calendar days of receipt of final accounting from Authority, make full payment to Authority. Beginning at the expiration of the 60 day period, District shall pay Authority one (1) percent per month interest, or any portion of a month, on any unpaid balance until completely paid.

Treated Water Pipeline, Raw Water  
Pipeline, O8FCF, and Associated  
Facilities Agreement

- 6.7 District will reimburse all Authority's costs to maintain and repair District's Treated Water Pipeline and associated line structures from Authority's Second Aqueduct to OWTP. Reimbursement will include Authority's actual costs, direct expenses including salaries, wages, fringe benefits "costs" (such as medical insurance, sick leave, vacation, etc.) and non-personnel costs and an overhead factor of fifteen (15) percent applied to direct labor incurred in providing maintenance and repair of District's Treated Water Pipeline and associated line structures. Billings submitted by Authority to District for payment shall have supporting accounting documentation of all costs incurred by Authority for maintenance and repair. District will pay Authority within 30 calendar days of the billing date. Any payment made after that date shall include interest on the unpaid balance at Authority's current delinquency charge as provided in Authority's Administrative Code.
- 6.8 District will pay fifty (50) percent of Authority's actual costs to administer and maintain the pipeline access road and Treated Water Pipeline and Raw Water Pipeline right-of-way. Reimbursement terms by District to Authority will be in accordance with the provisions in Paragraph 6.6 above except as modified in this paragraph.

7. Records and Audit:

- 7.1 Detailed records for all costs to perform and meet the terms and conditions of this Agreement will be available at Authority for inspection by District for a period of three years from the filing of the Notice of Completion for the Treated Water Pipeline, Raw Water Pipeline, and O8FCF and for three years after billing District for any maintenance and repairs for verification by District's auditor. If District determines an audit is necessary, it will be completed at District's expense during the three year period. If any adjustments are recommended by the audit, after agreement with those recommendations by Authority and District, which agreement shall not be unreasonably withheld, Authority shall make payment to District or District shall make payment to Authority, as the case may be, in accordance with such recommendations, within 60 calendar days of receipt of the audit.

Treated Water Pipeline, Raw Water  
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8. Cooperation:

- 8.1 Each party will cooperate with the other by exchanging information promptly so the work can be completed efficiently, as designed, pursuant to the construction contract documents including designs, specifications, drawings, bid forms, and other related contract documents.

9. Right to Terminate Agreement:

- 9.1 Either Authority or District may terminate the portions of this Agreement related to design of the Treated Water Pipeline prior to the sixty (60) percent design level and review. Should termination by District occur, District agrees to pay Authority its share of all costs shown in this Agreement incurred to the date of termination plus all costs to get Authority's Raw Water Pipeline construction contract documents redesigned to be bid without District's Treated Water Pipeline. Should termination by Authority occur, District shall have no obligation for costs incurred by Authority, except District will be responsible to pay Authority's costs incurred up to the date of termination if Authority's cause for termination is for District not performing or meeting the terms and conditions of this Agreement and Amendments thereto.
- 9.2 Either Authority or District may terminate the portions of this Agreement related to construction of District's Treated Water Pipeline and Authority's Raw Water Pipeline at time of advertising for bids prior to Authority awarding a construction contract. Should termination occur by District, District agrees to pay Authority its share of all costs shown in this Agreement incurred to the date of termination plus all costs to get Authority's Raw Water Pipeline construction contract documents redesigned to be bid without District's Treated Water Pipeline. Should termination by Authority occur, District shall have no obligation for costs incurred by Authority and Authority agrees at Authority's cost to redesign the Treated Water Pipeline construction contract documents to be bid without Authority's Raw Water Pipeline.
- 9.3 Should termination by either party occur during design or prior to awarding a construction contract, Authority will provide District all construction contract documents as they exist at termination within 30 calendar days.

10. Indemnification:

- 10.1 Indemnification by Authority: Except for liability, claims or losses attributable to the sole active negligence or willful misconduct of District, its officers, employees or assigns, Authority shall defend, indemnify and hold District, its offices, employees and agents harmless against all liability, claims and losses of any kind or nature for death, bodily injury, property damage or any other loss resulting from the Authority's activities pursuant to this Agreement.
- 10.2 Indemnification by District: Except for liability, claims or losses attributable to the sole active negligence or willful misconduct of Authority, its officers, employees or assigns, District shall defend, indemnify and hold Authority, its officer, employees and agents harmless against all liability, claims and losses of any kind or nature for death, bodily injury, property damage or any other loss resulting from the District's activities pursuant to this Agreement.

11. Dispute Resolution:

- 11.1 If any dispute, controversy or claim arises out of or relates to any cost sharing provision of this Agreement or concerns the breach or interpretation of any cost sharing provision of this Agreement, which cannot be settled through negotiation, District and Authority agree first to try in good faith to settle the dispute, controversy, claim, breach or interpretation of the cost sharing provision of the Agreement by mediation under the most recent version of the American Arbitration Association Construction Industry/Commercial Mediation Rules, the cost of which shall be borne equally by the parties. Such mediation shall not be applicable to any issues related to the Olivenhain Dam or other Emergency Storage Project component which are described in the ESP Agreement but are not covered in this Agreement.

12. Laws and Venue:

- 12.1 This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in the superior court, County of San Diego, or a federal court situated

Treated Water Pipeline, Raw Water  
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Facilities Agreement

in the County of San Diego, State of California. In the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorneys' fees, as determined by the court.

13. Amendment:

13.1 This Agreement may be modified only by a subsequent written Amendment executed by both parties

14. Successors or Assigns:

14.1 This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of the duties be delegated, without the express written consent of both parties, which shall not be unreasonably withheld or delayed. Any attempt to assign or delegate this Agreement without the express written consent of both parties shall be void and of no force or effect.

15. Notice:

15.1 Any Notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, postage prepaid, addressed to:

Olivenhain Municipal Water District  
1966 Olivenhain Road  
Encinitas, CA 92024-9761  
Attention: General Manager

San Diego County Water Authority  
3211 Fifth Avenue  
San Diego, CA 92103  
Attention: Director of Engineering

16. Signature:

16.1 The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

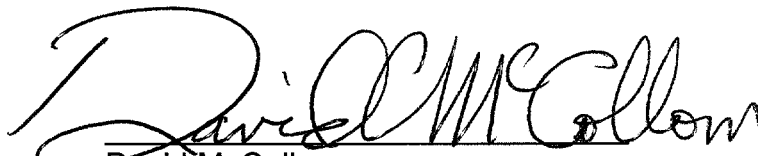
Treated Water Pipeline, Raw Water  
Pipeline, O8FCF, and Associated  
Facilities Agreement

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the  
date written above.

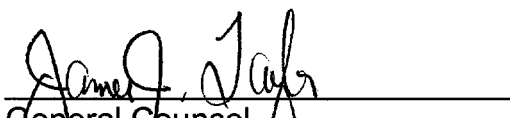
SAN DIEGO COUNTY  
WATER AUTHORITY


*for*   
Maureen A. Stapleton  
General Manager

OLIVENHAIN MUNICIPAL  
WATER DISTRICT

  
David McCollom  
General Manager

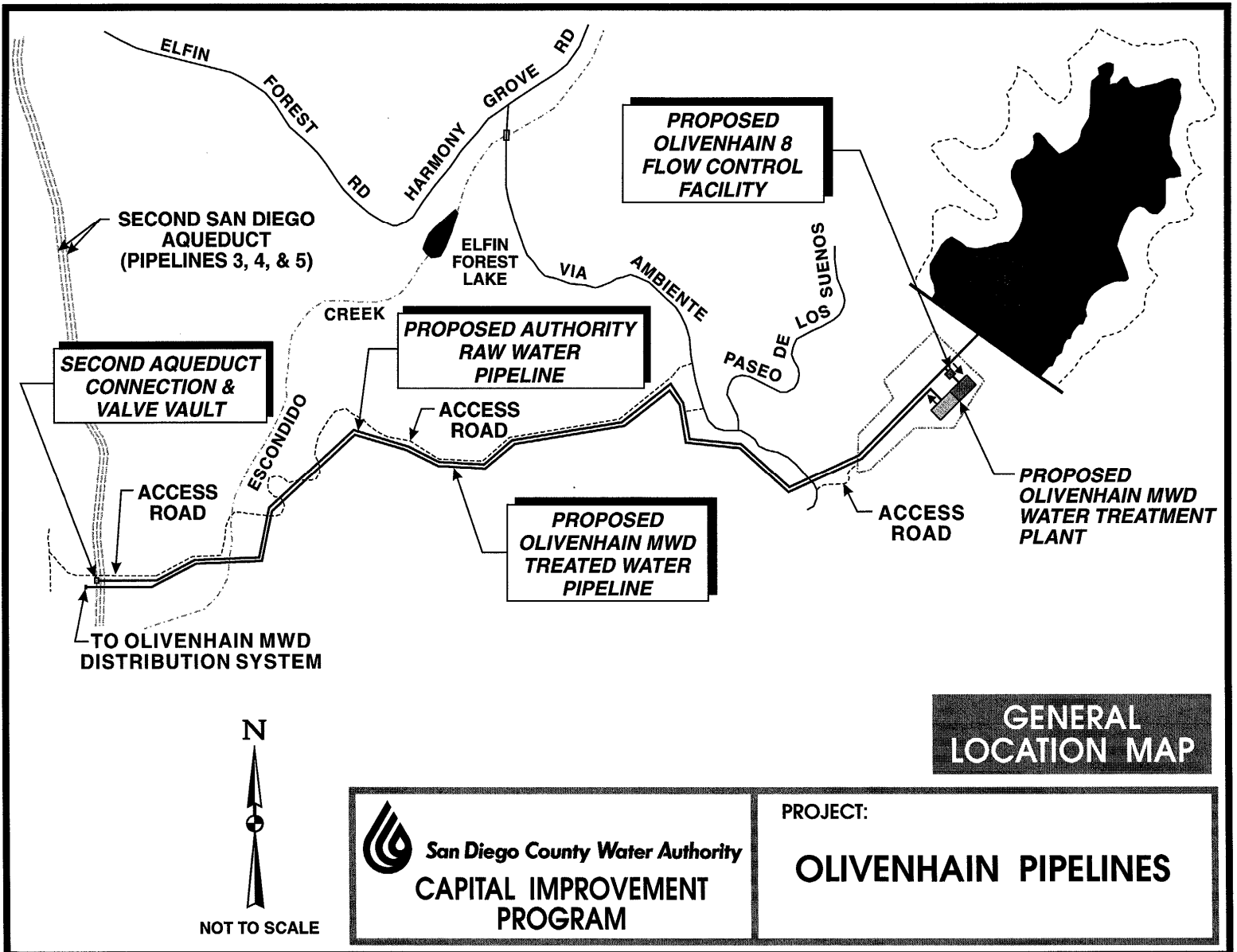
Approved as to form and legality:

*Deputy*   
General Counsel  
San Diego County Water Authority

  
General Counsel  
Olivenhain Municipal Water District

Attachments:

1. Exhibit "A", General Location Map
2. Exhibit "B", "Grant of Easement to Authority"



**EXHIBIT B**

PLEASE RECORD THIS DOCUMENT AT )  
NO FEE AS IT IS TO THE BENEFIT )  
OF THIS DISTRICT (GOV. CODE [6103]) )  
 )  
RECORDING REQUESTED BY AND )  
WHEN RECORDED, PLEASE MAIL TO: )  
 )  
San Diego County Water Authority )  
Right of Way Department )  
3211 Fifth Avenue )  
San Diego, California 92103-5718 )

---

Space above this line for  
Recorder's use.

Assessor's Parcel No. \_\_\_\_\_  
Project Name & No. \_\_\_\_\_  
\_\_\_\_\_

**DOCUMENTARY TRANSFER**  
**TAX: None**  
**San Diego County Water Authority**

---

**Executive Secretary**  
**Board of Directors**

**GRANT OF EASEMENT**  
**TO THE**  
**SAN DIEGO COUNTY WATER AUTHORITY**

The undersigned ("Grantor") owns the real property described in Exhibit A, Paragraph 1 ("Property"), attached hereto and made a part hereof by this reference. For valuable consideration, receipt of which is acknowledged, Grantor grants to the San Diego County Water Authority ("Grantee") an exclusive and permanent easement, together with the right to use and occupy the surface and subsurface of the real property described in Exhibit A, Paragraph 2 ("Easement Area") and as shown on Exhibit B, Grantee's Right of Way Drawing for Pipeline\_\_\_\_\_, Parcel\_\_\_\_\_, attached hereto and made a part hereof by this reference.

The easement granted hereby shall be for the following purposes, including without limitation, the construction, installation, operation, repair, reconstruction, relocation and removal and all activities necessary to construct, install, reconstruct, relocate, replace, remove, operate,

maintain, inspect and repair, now and in the future, a pipeline or pipelines, which may parallel each other, designed for the general purpose of transporting and distributing water, together with related appurtenant facilities, which may extend above the surface of the Easement Area, including vaults, manholes, flow control and measuring devices, air release and air vacuum valves, alarms, erosion control facilities, blow-offs, pumping wells, power transmission and communication conduits, antennas and cables necessary to the operation and maintenance of the pipelines, underground anodes, anode wells and related facilities for cathodic protection of pipelines and any other facilities necessary for the operation, protection and maintenance of pipeline or pipelines.

Grantor further grants the right of unobstructed ingress and egress by a practical route across the Property to, along and from the Easement Area, including the right to pass and re-pass over and along the Easement Area, including access to Grantee's other easements, and to deposit tools, implements and other materials on the Easement Area and to utilize construction, automotive and other equipment thereon when necessary for the purpose of exercising its rights hereunder.

Grantee may remove any buildings, structures, brush, trees or other vegetation or objects which are located on the Easement Area at the time of acquisition at Grantee's sole cost. Upon completion of any work by Grantee on the Easement Area, Grantee shall restore the surface at Grantee's cost to a compacted, neat, clean condition but not necessarily the same condition as prior to such work. Grantee may trim, cut or clear any tree, brush or other vegetation on the Easement Area from time to time as Grantee determines necessary to the exercise of its rights hereunder.

Grantor reserves the right to use the surface of the Easement Area in a manner which does not conflict, interfere with or disturb the rights and uses herein granted to the Grantee, including paving with asphalt and use for access and parking purposes so long as Grantee can gain immediate access to perform such work as necessary for its purposes and uses as herein granted. Grantor shall not cause or permit, by grading or filling, an increase or decrease in the surface elevation of the Easement Area, nor dig or drill any wells, or construct fences, gates, posts, chains, walls or other

objects, which occupy or physically intrude on the land, nor plant any trees, without prior written approval of the Grantee. Grantee shall establish reasonable procedures for such approvals, including encroachment permits, and shall not unreasonably withhold approval of uses which are not detrimental to the rights and uses granted it hereunder.

Grantor shall not construct any permanent buildings or structures and place any toxic or hazardous materials or objects on the easement area.

Grantee, after reasonable written notice to Grantor or its heirs, successors and assigns, shall have the right to remove any earthfill, fences, gates, posts, chains, walls, buildings, structures, trees, toxic or hazardous materials or objects placed on the Easement Area by Grantor without the consent of Grantee. Grantor agrees to pay Grantee the cost of removal and of restoring the Easement Area to its prior condition, including staff, costs and interest.

Grantor waives any right under Civil Code Section 845 and any other right, if any, to compel Grantee to improve or maintain any part of the Easement Area as a roadway or private right of way.

If litigation is commenced to enforce or interpret this Agreement or the rights and obligations hereunder, including declaratory relief, the prevailing party shall be entitled to recover, in addition to any other legal remedies, all reasonable litigation costs including attorneys' fees.

The rights and obligations contained herein shall inure to the benefit of and be binding upon the successors-in-interest, agents, employees, assigns, and transferees of the parties hereto.

Executed by the GRANTOR this \_\_\_\_\_ day of \_\_\_\_\_, 199 \_\_\_\_.

GRANTOR:

\_\_\_\_\_  
(name of grantor)

By: \_\_\_\_\_  
(sign here)

\_\_\_\_\_  
(title of signatory)

By: \_\_\_\_\_  
(sign here)

\_\_\_\_\_  
(title of signatory)

Approved as to form:

By: \_\_\_\_\_  
General Counsel

**(Notarial acknowledgment of execution by GRANTOR must be attached.)**

**SDCWA** \_\_\_\_\_



80AGR002

AGREEMENT

SANTA FE IRRIGATION DISTRICT

AND

OLIVENHAIN MUNICIPAL WATER DISTRICT

CONCERNING USE OF OLIVENHAIN PIPELINE CROSSING

THE SAN DIEGUITO RIVER

THIS AGREEMENT is entered into by and between the SANTA FE IRRIGATION DISTRICT [SANTA FE] and the OLIVENHAIN MUNICIPAL WATER DISTRICT [OLIVENHAIN].

R-E-C-I-T-A-L-S

1. OLIVENHAIN has installed a temporary 8-inch pipeline across the San Dieguito River [RIVER] to serve OLIVENHAIN customers on the north side of the RIVER.
2. SANTA FE is in the process of constructing a new 18-inch line on the north and south side of the RIVER to serve SANTA FE customers. To complete this line, SANTA FE must have a pipeline across the RIVER.
3. It is contemplated that the County of San Diego will construct a bridge across the RIVER at which time each District will arrange for the construction of permanent pipelines crossing the RIVER to serve their respective service areas and customers.
4. Pending the completion of the county bridge and the installation of permanent pipelines crossing the RIVER by OLIVENHAIN and by SANTA FE, it is in the mutual interests of each District to enter into an Agreement for the use of OLIVENHAIN's temporary 8-inch line crossing the RIVER as a means of avoiding the unnecessary duplication of temporary facilities.

NOW, THEREFORE, SANTA FE AND OLIVENHAIN MUTUALLY AGREE AS FOLLOWS:

5. SANTA FE shall:

5.1 Lease the OLIVENHAIN 8-inch steel pipeline for a period of three (3) years or until such time as the county bridge is installed and SANTA FE installs a permanent pipeline across the RIVER, whichever first occurs. If the county bridge is not

5.2 Pay the sum of TEN THOUSAND DOLLARS (\$10,000.00) to OLIVENHAIN for the lease of OLIVENHAIN's 8-inch steel pipeline at the time of execution of this Agreement.

5.3 Connect to OLIVENHAIN's 8-inch steel pipeline at Via de Sante Fe and Calzada del Bosque north of the RIVER and at a mutually agreed point south of the RIVER.

5.4 Serve water to the OLIVENHAIN customers north of the RIVER, read the meters by which SANTA FE serves OLIVENHAIN customers and report the meter readings to OLIVENHAIN and add the quantity of water served to OLIVENHAIN's customers pursuant to this Agreement to the quantity of water otherwise provided by SANTA FE to OLIVENHAIN.

6. OLIVENHAIN shall:

6.1 Disconnect the OLIVENHAIN system from the 8-inch crossing pipeline at a point south of the RIVER to be mutually agreed upon by SANTA FE and OLIVENHAIN.

6.2 Pay SANTA FE for the water served to OLIVENHAIN customers in the same manner as OLIVENHAIN Pays SANTA FE for other water received by OLIVENHAIN from SANTA FE.

6.3 Utilize the readings provided by SANTA FE for water served to OLIVENHAIN customers and bill those customers and collect from those customers according to OLIVENHAIN's rates.

7. SANTA FE and OLIVENHAIN mutually agree that:

7.1 In the event of a washout or failure of the 8-inch pipeline, the line shall be promptly repaired by OLIVENHAIN and the cost of repairs shall be shared equally by SANTA FE and by OLIVENHAIN.

7.2 In the event SANTA FE is unable to serve OLIVENHAIN's customers, OLIVENHAIN may terminate this Agreement and assume control of the pipeline upon due notice given to SANTA FE.

7.3 Upon completion of the new bridge by the County of San Diego and the installation by SANTA FE of the pipeline on that bridge, SANTA FE shall disconnect the 8-inch steel pipeline from SANTA FE's sytem on the south side of the RIVER and OLIVENHAIN may reconnect the OLIVENHAIN system to the 8-inch pipeline.

7.4 The interconnection between the OLIVENHAIN and SANTA FE system on the north side of the RIVER shall remain as a permanent emergency connection between SANTA FE and OLIVENHAIN.

7.5 Upon completion of the permanent SANTA FE pipeline crossing the RIVER and on sixty (60) days notice from SANTA FE to OLIVENHAIN, OLIVENHAIN shall resume serving OLIVENHAIN's customers on the north side of the RIVER.

8. Notice:

8.1 Notices which any party is required to give or desires to give pursuant to this Agreement may be served upon the other party by personally delivering a copy thereof, or by mailing any such notice by certified mail, return receipt requested, postage prepaid, addressed as follows:

SANTA FE IRRIGATION DISTRICT  
P.O. Box 409  
Rancho Santa Fe, California 92067

Attention: James S. Tolley, Manager

OLIVENHAIN MUNICIPAL WATER DISTRICT  
1966 Olivenhain Road  
Encinitas, California 92024

Attention: William H. Hollingsworth, Manager

8.2 Any party may from time to time designate a different address for notice by notifying the other party; any notice mailed by regular mail shall be deemed received by the party to whom such notice is addressed forty-eight (48) hours after the mailing thereof; any notice mailed by certified mail, return receipt requested, shall be deemed received by the party to whom such notice is addressed on the date of the return receipt.

9. In the event of litigation with respect to the provisions of or arising out of this Agreement, the Court may award costs and attorneys' fees as the Court deems just and equitable.

10. No party to this Agreement shall be entitled to assign all or any portion of their rights or obligations contained in this Agreement without obtaining the prior written consent of the other party.

11. This Agreement contains all the representations and the entire understanding between the parties with respect to the subject matter of this Agreement; any prior correspondence, memoranda or agreements are replaced in total by this Agreement.

12. The terms, conditions and covenants of this Agreement should be construed wherever possible, consistent with the applicable laws and regulations. To the extent that any provision of the Agreement violates any applicable law or regulation considering an interpretation of this Agreement consistent with that law or regulation, the remaining provisions shall nevertheless be carried into full force and effect and remain enforceable.

13. This Agreement and any disputes relating to this Agreement shall be construed under the laws of the State of California.

14. For the purposes of litigation or arbitration, venue shall lie in the North County Judicial District, County of San Diego, State of California, or, in such venue cannot be exercised, in the federal or state court nearest to the North County Judicial District, County of San Diego.

15. The effective date of this Agreement, executed in duplicate, to be performed in the North County Judicial District, County of San Diego, State of California, consisting of 4 pages, is August 1st, 1980.

IN WITNESS WHEREOF, the respective DISTRICTS have caused this instrument to be executed by their respective officials and to be sealed by the official seal pursuant to motions duly adopted by the Board of Directors of each DISTRICT.

OLIVENHAIN MUNICIPAL WATER DISTRICT

DATED: 9/18/80

By Howard G. Golem  
HOWARD G. GOLEM, President  
By William H. Hollingsworth  
WILLIAM H. HOLLINGSWORTH, Secretary

(S E A L)

SANTA FE IRRIGATION DISTRICT

DATED: July 21, 1980

By Ray Griset  
RAY GRISET, President  
By James S. Tolley  
JAMES S. TOLLEY, Secretary  
Asst.

(S E A L)



78AGR001

AGREEMENT

SAN MARCOS COUNTY WATER DISTRICT, OLIVENHAIN MUNICIPAL  
WATER DISTRICT AND CARLSBAD MUNICIPAL WATER DISTRICT  
CONSTRUCTION OF A WATER TRANSMISSION AND STORAGE SYSTEM  
QUESTHAVEN PIPELINE

THIS AGREEMENT is made and entered into by and between THE SAN MARCOS COUNTY WATER DISTRICT (SAN MARCOS), THE OLIVENHAIN MUNICIPAL WATER DISTRICT (OLIVENHAIN) and THE CARLSBAD MUNICIPAL WATER DISTRICT (CARLSBAD), collectively referred to as DISTRICTS.

R-E-C-I-T-A-L-S

This Agreement between DISTRICTS is made and is to be executed in the North County Judicial District, County of San Diego, State of California, in view of the following facts and purposes.

1. DISTRICTS are experiencing an increased demand for water service necessitating an additional connection to the San Diego County Water Authority and transmission and storage facilities bringing the water from that connection into the areas served by the DISTRICTS, respectively.
2. DISTRICTS contemplate that a connection to the San Diego County Water Authority Aqueduct at its intersection with Questhaven Road and a transmission line running generally along Questhaven Road to Rancho Santa Fe Road and thence Northerly to the intersection of Rancho Santa Fe Road with the future Melrose Road and thence along the future Melrose Road to an intersection with Alga Road, then in an easterly direction to a storage facility, together with necessary appurtenances and storage facilities to serve their purposes will be constructed.

3. DISTRICTS desire to enter into a cooperative agreement for the construction, operation, maintenance, repairs and management of the transmission and storage facilities (THE PROJECT) as the most economical means of augmenting the water supply for each DISTRICT.

C-O-V-E-N-A-N-T-S

4. IT IS, THEREFORE, AGREED BY AND BETWEEN DISTRICTS, SUBJECT TO THE MUTUAL COVENANTS AND CONDITIONS SET FORTH HEREIN, AS FOLLOWS:

5. GENERAL PROVISIONS

5.1 SAN MARCOS shall be the lead agency and shall be responsible for construction of the project and management of the project after construction.

5.2 The approximate capacity to be provided each DISTRICT and the approximate percentage of ownership (capacity) in the project is set forth in Exhibit "A" attached hereto and incorporated herein. The final capacity and percentage of ownership will be determined by the final design of the project.

6. CONSTRUCTION

6.1 SAN MARCOS shall be responsible for preparing detailed plans and specifications and submitting the plans and specifications to CARLSBAD and to OLIVENHAIN for approval prior to inviting construction bids.

6.2 Each DISTRICT shall deposit in a separate fund to be administered by SAN MARCOS, the sums of money set forth in Exhibit "B" to cover the initial costs involved in Environmental Reports and preparation of bids and specifications and related initial proceedings, including right-of-way or site acquisition costs, to provide a fund for payment of expenses incurred up through publication of the notice inviting bids.

6.3 When bids have been received and analyzed, the bids received will be furnished by SAN MARCOS to OLIVENHAIN and CARLSBAD with the recommendation of SAN MARCOS as to the award of the construction contract for the project; OLIVENHAIN and CARLSBAD will have 30 days to advise SAN MARCOS, in writing, of concurrence or disagreement with SAN MARCOS recommendation as to the proposed award, providing, that if no written disagreement is received within the 30-day period fixed in the SAN MARCOS letter of recommendation, silence will be deemed approval of the SAN MARCOS recommendation and will be deemed authorization for SAN MARCOS to award the contract as recommended.

6.4 In the letter of recommendation as to the award, SAN MARCOS also will note the amount of additional funds required to be deposited by OLIVENHAIN and CARLSBAD in the account maintained by SAN MARCOS for the construction of the project according to the final percentage of ownership (capacity) allocated to each District (allowing any credits for funds remaining from the initial deposit) and said funds shall be pledged by OLIVENHAIN AND CARLSBAD with SAN MARCOS not later than the expiration of the 30-day period set forth in SAN MARCOS letter of recommendation for award of the contract. In the administration of contract, SAN MARCOS shall notify OLIVENHAIN and CARLSBAD of the total amount of the payments to make to the contractor as such payments accrue and as to the specific amount to be paid by OLIVENHAIN and CARLSBAD and OLIVENHAIN and CARLSBAD shall deposit that amount with SAN MARCOS not later than five days prior to the time the payment is to be made.

6.5 No individual change in, or amendments to, the approved plans and specifications or extra items will be authorized by SAN MARCOS in excess of the amount of TEN THOUSAND DOLLARS (\$10,000.00), unless approved by each DISTRICT, in writing.

6.6 SAN MARCOS will supervise the construction of the project to insure compliance by the contractor with the approved plans and specifications, or approved changes or amendments to the approved plans and specifications.

6.7 SAN MARCOS will take any and all necessary steps to acquire necessary easements and rights-of-way for the project with said easements and rights-of-way to exist in favor of all DISTRICTS having ownership (capacity) in the correlative facility; in the event eminent domain proceedings are necessary, then, SAN MARCOS will take any necessary legal proceedings, all DISTRICTS agree to adopt any necessary resolutions connected with said legal proceedings; the costs of all such proceedings shall be part of the construction costs.

6.8 DISTRICTS will share in all costs of the project, including but not limited to construction costs, engineering fees and costs, legal expense, the cost of acquisition of any necessary easements and rights-of-way and all other expenses incident to the project according to proportionate ownership (capacity).

6.9 SAN MARCOS will keep and maintain proper books of account and records in which complete and current entries shall be made of all transactions relating to the project and other costs connected therewith; OLIVENHAIN and CARLSBAD shall have the right, at reasonable times, from time to time, during regular business hours, to inspect all such books and records.

7. ROUTINE MAINTENANCE AND OPERATION OF PROJECT

7.1 Upon completion of the project, SAN MARCOS shall maintain and operate the project for the mutual benefit of SAN MARCOS, OLIVENHAIN and CARLSBAD.

7.2 Costs of expendables such as, but not limited to power, chemicals, etc., will be borne and paid by each of the parties

in a ratio of their flow to the total flow of water transported through the project for each of the parties for the preceeding calendar year; until such time as the preceeding calendar year is available, the period of time shall be the cumulative preceeding months of operation.

7.3 SAN MARCOS shall bill CARLSBAD and OLIVENHAIN monthly for the DISTRICTS proportionate shares of such costs and maintenance; CARLSBAD and OLIVENHAIN shall pay such statements within (20) twenty days after receipt of the billing.

7.4 SAN MARCOS shall keep and maintain proper books of account records in which complete and current entries shall be made of all transactions, including all receipts and disbursements, relating to the administration, maintenance, operation and repair of the project; CARLSBAD and OLIVENHAIN shall have the right, at reasonable times, from time to time, during regular business hours, to inspect all such books and records to verify any statement rendered by SAN MARCOS to CARLSBAD or OLIVENHAIN for charges payable by those DISTRICTS to SAN MARCOS. SAN MARCOS shall utilize the "Uniform Accounting Program" of the State Controller's Office.

## 8. REPAIRS

8.1 Except in case of emergency repairs, prior to making any repairs which are estimated to cost in excess of ONE THOUSAND DOLLARS (\$1,000.00), SAN MARCOS shall obtain the prior approval of CARLSBAD and OLIVENHAIN having correlative ownership (capacity) for any such expenditures; SAN MARCOS shall give appropriate notification to OLIVENAHIN and to CARLSBAD concerning any emergency repairs which are to be made.

8.2 The expenses of repairs shall be charged to each DISTRICT on the basis of percentage of ownership (capacity) in the project

and shall be substantiated by customary accounting procedures and shall be paid by each DISTRICT within twenty (20) days after billing.

9. PAYMENT FOR ALLOCATED WATER AND METERS

9.1 SAN MARCOS shall receive all water into the project and shall install the necessary meters and appurtenances that are required to account for the water delivered to each of the DISTRICTS pursuant to this Agreement; any discrepancy between the amount of water received by SAN MARCOS into the project and that delivered to each of the DISTRICTS will be adjusted and the cost thereof handled as a cost of operation and maintenance and borne by each of the parties in the same manner as other costs of operation and maintenance (based on percentage of flow/use as set forth in Paragraph 7.2 above).

9.2 If allowed by the San Diego County Water Authority, payment for the water allocated to each DISTRICT shall be accomplished through the reporting of exchanges by SAN MARCOS to the San Diego County Water Authority with the San Diego County Water Authority billing each DISTRICT for the amount of water use allocated to each DISTRICT; otherwise SAN MARCOS will bill each DISTRICT for their prorated share of water delivered at the then prevailing rate established by the San Diego County Water Authority.

9.3 Each of the DISTRICTS shall bear the full cost of any water meter and appurtenance installed for the sole use of that DISTRICT; any cost connected with the installation of any water meter and appurtenance installed for the joint use of the parties will be shared in the ratio of ownership (capacity) rights of each party in the joint meter and/or joint appurtenance.

10. SPECIAL PROVISIONS

10.1 Any connections to the pipeline by any DISTRICT shall be subject to written approval of the other DISTRICTS correlative ownership (capacity).

10.2 SAN MARCOS agrees to hold OLIVENHAIN and CARLSBAD free and harmless from any damage or injury to the person, or property of any third person (not a party to this Agreement) arising from the maintenance and operation of the project by SAN MARCOS.

10.3 Notices which any DISTRICT is required to give or desire to give hereunder may be served upon another DISTRICT by personally delivering a copy thereof or by mailing any such notice by regular or certified mail, return receipt requested, postage prepaid and addressed as follows:

SAN MARCOS COUNTY WATER DISTRICT  
788 W. San Marcos Boulevard  
San Marcos, California 92069

OLIVENHAIN MUNICIPAL WATER DISTRICT  
1966 Olivenhain Road  
Encintas, California 92024

CARLSBAD MUNICIPAL WATER DISTRICT  
5950 El Camino Real  
Carlsbad, California 92008

10.4 Any DISTRICT may from time to time designate a different address for notice by notifying the other DISTRICTS; any notice mailed by regular mail shall be deemed received by the party to whom such notice is addressed forty-eight (48) hours after the mailing thereof; any notice mailed by certified mail, return receipt requested, shall be deemed by the party to whom such

notice is addressed on the receipt date of the return receipt.

10.5 If any party brings any action or proceedings to enforce, protect, or establish any right or remedy under the Agreement, the prevailing party shall be entitled to recover reasonable costs and attorneys' fees as established by the Court.

10.6 Venue for the purposes of litigation or arbitration shall lie in the North County Judicial District, County of San Diego, State of California or, if such venue cannot be exercised, in the nearest Federal or State court in the County of San Diego.

11. The effective date of this Agreement, executed in triplicate, in the North County Judicial District, County of San Diego, State of California, consisting of 11 pages, is July 1, 1978.

IN WITNESS WHEREOF, the respective DISTRICTS have caused this instrument to be executed by the DISTRICTS' respective officials and to be sealed by the official seal pursuant to motions duly adopted by the Board of Directors of each DISTRICT.

DATED: June 12, 1978

SAN MARCOS COUNTY WATER DISTRICT

By W. H. Blanchard  
President of the Board of Directors

DATED: June 12, 1978

By J. M. Taylor  
Secretary of the Board of Directors

(SEAL)

SAN MARCOS COUNTY WATER DISTRICT  
788 W. San Marcos Boulevard  
San Marcos, California 92069

DATED: May 18, 1978

OLIVENHAIN MUNICIPAL WATER DISTRICT

By Howard G. Golen  
President of the Board of Directors

DATED: May 18, 1978

By William Hollingsworth  
Secretary of the Board of Directors

(SEAL)

OLIVENHAIN MUNICIPAL WATER DISTRICT  
1966 Olivenhain Road  
Encinitas, California 92024

DATED: Aug 2, 1978

CARLSBAD MUNICIPAL WATER DISTRICT

By Donald G. Patten  
President of the Board of Directors

DATED: Aug 2, 1978

By Fred W. Wards  
Secretary of the Board of Directors

(SEAL)

CARLSBAD MUNICIPAL WATER DISTRICT  
5950 El Camino Real  
Carlsbad, California 92008

**ENGINEER'S OPINION AS TO PROBABLE COST**

Description	Amount	Unit Cost	Total Cost	S.M.C.W.D.		O.M.W.D.		C.M.W.D.		LA COSTA				OTHER	
				%	\$	%	\$	%	\$	East of Rho. Santa Fe Rd.		West of Rho. Santa Fe Rd.		%	\$
										%	\$	%	\$		
Connection* CL2 & Piping	1	158,000	158,000	8.02	12,672	18.07	28,551	24.04	37,983	4.81	7,600	5.88	9,290	38.76 0.42	(AD76-1&2) 61,241 (21) 663
Line 13&14	6067 LF	62/LF	376,154	13.09	49,239	29.50	110,965	39.25	147,640	7.86	29,566	9.61	36,148	0.69	2,596
Line 12	1479 LF	56/LF	82,824	18.56	15,372	0.00	0,000	55.68	46,116	11.15	9,235	13.63	11,289	0.98	812
Line 11	2822 LF	56/LF	158,032	19.84	31,354	0.00	0,000	59.50	94,029	6.10	9,640	14.56	23,009	0.00	-0-
Pressure Reducer	1	65,000	65,000	19.84	12,896	0.00	0,000	59.50	38,675	6.10	3,965	14.56	9,464	0.00	-0-
Line 10	3280 LF	45/LF	147,600	7.81	11,527	0.00	0,000	77.59	114,523	0.00	0,000	14.60	21,550	0.00	-0-
Line 9	1780 LF	45/LF	80,100	7.79	6,240	0.00	0,000	77.56	62,125	0.00	0,000	14.65	11,735	0.00	-0-
Line 8	1895 LF	40/LF	75,800	0.00	0,000	0.00	0,000	0.00	0,000	0.00	0,000	100	75,800	0.00	-0-
Storage	2.75 MG	.22/gal	605,000	17.96	108,658	0.00	0,000	0.00	0,000	35.49	214,715	43.42	262,691	3.13	18,936
Flow Meter & Control	1	65,000	65,000	0.00	0,000	100.00	65,000	0.00	0,000	0.00	0,000	0.00	0,000	0.00	
Flow Control	1	55,000	55,000	0.00	0,000	0.00	0,000	100	55,000	0.00	0,000	0.00	0,000	0.00	
Totals			1,868,510		247,958		204,516		596,091		274,721		460,976		(AD76-1&2) 61,241 (21) 23,007
Engineering-Administration Contingencies			453,395		49,592		40,903		119,208		82,416		138,293	@30% (21) 18,372	
														@20%	4,601
GRAND TOTAL			2,321,905		297,558		245,419		715,309		357,137		599,269	(AD76-1) (21) 79,613	27,603

\*Connection \$85,000  
CL2 65,000

# MAXIMUM DAILY FLOWS

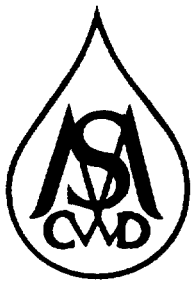
ITEM	TOTAL MGD	SMCWD		OMWD		CMWD		LA COSTA				OTHER		
								East of Rho. Santa Fe Rd.		West of Rho. Santa Fe Rd.				
		MGD	%	MGD	%	MGD	%	MGD	%	MGD	%	MGD	%	REMARKS
Conne- ctions	35.815	2.871	8.02	6.470	18.07	8.610	24.04	1.725	4.81	2.107	5.88	13.881	38.76	AD76-1&2
Line 13 & 14	21.934	2.871	13.09	6.470	29.50	8.610	39.25	1.725	7.86	2.107	9.61	0.151	0.42	(21)
Line 12	15.464	2.871	18.56	---	0.00	8.610	55.68	1.725	11.15	2.107	13.63	0.151	0.98	(21)
Line 11	14.471	2.871	19.84	---	0.00	8.610	59.50	0.883	6.10	2.107	14.56	0.000	0.00	
P.R. Sta.	14.471	2.871	19.84	---	0.00	8.610	59.50	0.883	6.10	2.107	14.56	0.000	0.00	
Line 10	9.828	0.768	7.81	0.000	0.00	7.625	77.59	0.000	0.00	1.435	14.60	0.000	0.00	
Line 9	1.270	0.099	7.79	0.000	0.00	0.985	77.56	0.000	0.00	0.186	14.65	0.000	0.00	
Line 8	0.815										100.00			See Note
Stg. ONWD Meter & Control	2.750	0.494	17.96	0.000	0.00	0.000	0.00	0.976	35.49	1.194	43.42	0.086	3.13	(21)
CMWD Meter & Control	---	---	---	---	100.00	---	---	---	---	---	---	---	---	
	---	---	---	---	---	---	100.00	---	---	---	---	---	---	

Note: Parallel construction with Line 4 required only for La Costa west of Rancho Santa Fe Road.

Rev: 2/16/78  
E73028-025  
9/24/76



QUEST HAVEN  
LOS



# san marcos county water district

PHONE (714) 744-0460 • 788 SAN MARCOS BOULEVARD • SAN MARCOS, CALIFORNIA 92069

PRESIDENT  
OBY BLANCHARD

VICE PRESIDENT  
STANLEY A. MAHR

DIRECTORS  
SCOTT J. DOW JR.

WILLIAM A. MICHEL

JACK L. VANDERBECK

GENERAL MANAGER  
JAMES F. MCKAY

ATTORNEY  
VERNON A. PELTZER

April 21, 1978

Mr. William H. Hollingsworth, Manager  
Olivenhain Municipal Water District  
1966 Olivenhain Road  
Encinitas, California 92024

Dear Bill:

On April 5, 1978, I mailed you a copy of the Fourth Revision of the Questhaven Pipeline Agreement. Inadvertently we sent the wrong sheets which show the Maximum Daily Flows and Engineer's Opinion as to Probable Cost, which are the last two pages. We are enclosing the correct pages.

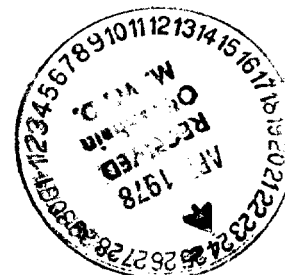
Hope this hasn't caused any inconvenience.

Sincerely,

  
James F. McKay  
General Manager

mds

Encl.



MAXIMUM DAILY FLOWS

ITEM	TOTAL MGD	SMCWD		OMWD		CMWD		LA COSTA				OTHER		REMARKS
		MGD	%	MGD	%	MGD	%	East of Rho. Santa Fe Rd.		MGD	%			
								MGD	%					
Connections	35.815	2.871	8.02	6.470	18.07	8.610	24.04	1.725	4.81	2.107	5.881	13.881	38.76	AD76-1&2 (21)
Line 13	21.934	2.871	13.09	6.470	29.50	8.610	39.25	1.725	7.86	2.107	9.61	0.151	0.69	(21)
Line 12	15.464	2.871	18.56	---	0.00	8.610	55.68	1.725	11.15	2.107	13.63	0.151	0.98	(21)
Line 11	14.471	2.871	19.84	---	0.00	8.610	59.50	0.883	6.10	2.107	14.56	0.000	0.00	
P.R. Sta.	14.471	2.871	19.84	---	0.00	8.610	59.50	0.883	6.10	2.107	14.56	0.000	0.00	
Line 10	9.828	0.768	7.81	0.000	0.00	7.625	77.59	0.000	0.00	1.435	14.60	0.000	0.00	
Line 9	1.270	0.099	7.79	0.000	0.00	0.985	77.56	0.000	0.00	0.186	14.65	0.000	0.00	
Line 8	0.815										100.00			See Note
SL	2.750	0.494	17.96	0.000	0.00	0.000	0.00	0.976	35.49	1.194	43.42	0.086	3.13	(21)
OMWD Meter & Control	---	---	---	---	100.00	---	---	---	---	---	---	---	---	
CMWD Meter & Control	---	---	---	---	---	---	100.00	---	---	---	---	---	---	

Note: Parallel construction with Line 4 required only for  
La Costa west of Rancho Santa Fe Road.



## ENGINEER'S OPINION AS TO PROBABLE COST

## LA COSTA

Description	Amount	Unit	Total	S.M.C.W.D.		O.M.W.D.		C.M.W.D.		LA COSTA			OTHER	
		Cost	Cost	%	\$	%	\$	%	\$	East of Rho. Santa Fe Rd.	West of Rho. Santa Fe Rd.		%	\$
Connection * 112 & Piping	1	158,000	158,000	8.02	12,672	18.07	28,551	24.04	37,983	4.81	7,600	5.88	9,290	38.76 (AD76-1&2)
													0.42	61,241
													(21)	663
Line 13&14	6067 LF	62/LF	376,154	13.09	49,239	29.50	110,965	39.25	147,640	7.86	29,566	9.61	36,148	0.69
Line 12	1479 LF	56/LF	82,824	18.56	15,372	0.00	0,000	55.68	46,116	11.15	9,235	13.63	11,289	0.98
Line 11	2822 LF	56/LF	158,032	19.84	31,354	0.00	0,000	59.50	94,029	6.10	9,640	14.56	23,009	0.00
Reducer	1	65,000	65,000	19.84	12,896	0.00	0,000	59.50	38,675	6.10	3,965	14.56	9,464	0.00
Line 10	3280 LF	45/LF	147,600	7.81	11,527	0.00	0,000	77.59	114,523	0.00	0,000	14.60	21,550	0.00
Line 9	1780 LF	45/LF	80,100	7.79	6,240	0.00	0,000	77.56	62,125	0.00	0,000	14.65	11,735	0.00
Line 8	1895 LF	40/LF	75,800	0.00	0,000	0.00	0,000	0.00	0,000	0.00	0,000	100	75,800	0.00
Storage	2.75 MG	.22/gal	605,000	17.96	108,658	0.00	0,000	0.00	0,000	35.49	214,715	43.42	262,691	3.13
Control	1	65,000	65,000	0.00	0,000	100.00	65,000	0.00	0,000	0.00	0,000	0.00	0,000	0.00
EXIST meter	1	55,000	55,000	0.00	0,000	0.00	0,000	100	55,000	0.00	0,000	0.00	0,000	0.00
Totals			1,868,510		247,958		204,516		596,091		274,721		460,976	(AD76-1&2) 61,241
														(21) 23,007

Engineering-Administration

Contingencies

453,395

@ 20%

@ 30%

@ 20%

@ 30%

@ 30%

(AD76-1&2)  
18,372  
(21)  
4,601

GRAND TOTAL

2,321,905

297,558

245,419

715,309  
50,278

357,137

599,269

(AD76-1)  
79,613  
(21)  
27,605

\*Connection \$85,000

CL2 65,000

Piping 8,000

Rev: 2/16/78

E73028-025

9/24/76